IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH AT JAIPUR.

J U D G M E N T

State Bank of Bikaner & Jaipur vs. Tufail Ahmed Khan & Another

S.B.Civil First Appeal No.46/1984 under Section 96 C.P.C. against the judgment and decree dated 14.12.1983 passed by Shri Amresh Kumar Singh RHJS, Additional District Judge No.1, Jaipur City, Jaipur in Civil Suit No.57/1980.

Date of Judgment :::::: July 3, 2006

PRESENT

HON'BLE MR.JUSTICE KHEM CHAND SHARMA

Mr.D.K.Soral for appellant.
None appeared for the respondent.

BY THE COURT (ORAL):-

The facts leading to this appeal in brief, are that the plaintiff appellant instituted a suit against the defendants for recovery of Rs.15,758.90 mentioning there

in that cash credit hypothication facility to the extent of Rs.10,000/- was given to defendant No.1 and in consideration thereof, the defendant No.1 executed a pronote in favour of plaintiff on 7.8.1970. The defendant No.2, by way of surety, executed an equitable mortgage of his House No.666 situated in Dariba Pan, Jaiur and deposited the title deeds with the plaintiff Bank. The defendant No.1 owed a sum of Rs.12,259.41 up to 31.12.1977 and acknowledged the same in writing. As per the plaint up to 30.9.1980 a sum of Rs.15,758.90 became due and, therefore, the suit was filed against both the defendants.

In the written statement, defendant respondent No.1 although admitted execution of the pronote, but submitted that there was no consideration behind execution of the pronote. The defendant also admitted the fact that an amount of Rs.12,259.41 was due towards him. It appears that defendant respondent No.2 did not put in appearance and, therefore, ex parte proceedings were taken against him.

On the basis of the pleadings of the parties, the trial court framed as many as ten issues.

From the side of the plaintiff VB Kabra was examined

as PW.1 and some documents were also exhibited. From the side of the defendant, defendant Tufail Ahmed appeared as DW.1 and he also examined Brahm Swaroop as DW.2.

Learned trial court after recording the evidence of the parties and hearing both the sides decreed the plaintiff's suit for Rs.13,953.22 as against defendant No.1 and dismissed the suit against defendant No.2 vide its judgment and decree dated 14.12.1983.

Feeling aggrieved of the impugned judgment and decree against defendant No.1 partly decreeing the suit and dismissing the suit against defendant No.2, the plaintiff has filed the instant appeal.

After hearing learned counsel for the appellant, I have gone through the impugned judgment and the material available on record.

PW.1 DB Kabra in his statement though has deposed that some of the documents bear signature of Hanuman Prasad defendant No.2 but at the same time he has admitted that his knowledge regarding the facts of the case is based on the record. In his cross-examination this witness has deposed that Ex.1 to 9 were not signed by the defendants in

his presence and he cannot say whether the documents were read over and explained to the defendants. Thus, from the evidence of PW.1 DB Kabra it is clear that neither the documents were executed in his presence nor the respondents put their signatures on these documents in his presence. The witness has not deposed that he was acquainted with the signatures of Hanuman Prasad, defendant No.2. Therefore, his evidence that the documents bear the signature of Hanuman Prasad has no evidentiary value in view of Section 47 of the Evidence Act. Since there is no evidence on record to prove that Hanuman Sharma has executed the documents purporting to be a guarantor of the loan, the trial court rightly rejected the suit against him which calls for no interference.

So far as decreeing the suit only for Rs.13,953.22 as against the claim of Rs.15,758.90 is concerned, the learned trial court has discussed the evidence of the parties while deciding issues No.9 and 10. As per the case of the plaintiff, the defendant admitted that Rs.12,259.41 were due against him as on 31.12.77. Thus, taking this amount as principal sum, the trial court calculated interest as Rs.2503.08 at the rate of 8.75% (5%+3.75%) as agreed between the parties. Thus, on the date of filing the suit i.e. on 2.5.1980 the total amount due against defendant

No.1 was Rs.14762.69 and after deducting Rs.1,300/- deposited by the defendant, the amount became due against defendant as calculated by the learned trial court comes to Rs.13,462.49 and after adding interest amount of Rs.490.73 for the period between 1.5.1980 to 30.9.1980 the total amount due against defendant comes to Rs.13,953.22. In this view of the matter, the finding arrived at by the learned trial court being based on proper appreciation of evidence both ocular and documentary cannot be interfered with and the impugned judgment deserves to be maintained.

Resultantly, the appeal fails and is, hereby, dismissed with no orders as to costs.

(K.C.Sharma),J.

bairwa